

STATE OF RHODE ISLAND

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

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v.

**C.A. No. T20-0011
20103500593**

ANTHONY WARE

DECISION

PER CURIAM: Before this Panel on January 20, 2021—Magistrate Kruse Weller (Chair), Judge Almeida, and Magistrate DiChiro, sitting—is Anthony Ware’s (Appellant) appeal from a decision of Judge Parker (Trial Judge), of the Rhode Island Traffic Tribunal sustaining the charged violation of G.L. 1956 § 21-28-4.01(c)(1), “Possession of marijuana, 1 ounce or less, 18 years or older.” Appellant appeared before this Panel *pro se*. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8.

I

Facts and Travel

On September 21, 2020, Officer Connor Bemis (Officer Bemis) of the Warren Police Department observed the back end of Appellant’s vehicle to be blocking a portion of Kelly Street. (Tr. 3). Officer Bemis identified the registered owner of the vehicle as Appellant. *Id.* at 4:1.

Officer Bemis exited his cruiser and observed Appellant “quickly exit the driver’s seat of the vehicle, grabbing his hand, and he had like, a fist. I didn’t see exactly what was in there, and then I watched him walk directly behind a granite staircase . . . crouch down, and then put two items down” *Id.* at 4:9-15. Officer Bemis testified he was about fifteen feet away from

Appellant at the time he exited his vehicle and that “[the Appellant] had it concealed, so there’s no way I would have been able to see marijuana from that distance.” *Id.* at 17:12-15. Officer Bemis testified that Appellant then walked toward him, identified himself and was visibly nervous. *Id.* at 4:15-21. Officer Bemis explained he went to the location in which he observed Appellant crouch down and found two items in plain view. *Id.* at 5:5-7, 16:11-12. Officer Bemis “located two glassine plastic baggies, one of which contained a greenish brown leafy substance, which was suspected marijuana.” *Id.* at 5:8-10. The baggies were seized on scene, and Officer Bemis testified that he conducted a marijuana field test at Warren Police Headquarters, determined that the substance was marijuana and “it was weighed to be under an ounce.” *Id.* at 5:13-16. Officer Bemis explained the marijuana was also sent to toxicology but that he was in direct chain of custody of the marijuana until securing it in the drug drop bin. *Id.* at 5:17-18, 11:7-10.

Officer Bemis also testified that he graduated from the Rhode Island Municipal Police Academy in 2018 and completed training in patrol operations and in drug detection by the East Providence Detective Division. *Id.* at 6. During his training, Officer Bemis learned how to identify burned and unburned marijuana. He also went to drug recognition expert school and was trained in field tests through his FTO program. *Id.* at 7. Officer Bemis explained the documentation and field testing process as part of his testimony. *Id.*

Appellant then testified that he happened to see a friend and got out of his car to talk to the friend. *Id.* at 12:4-9. He explained that while they were talking he noticed a cop going back and forth. *Id.* at 12:9-10. The Appellant further explained that the cop parked in the middle of the street, walked over and asked if they could talk. *Id.* at 12:15-19. The Appellant testified that Officer Bemis patted him down and asked if he could go into the trunk and search the vehicle. *Id.*

at 12:21-24. The Appellant agreed and stated that Officer Bemis did not find anything in the car. *Id.* at 13:1-3. The Appellant then testified that Officer Bemis “found some stuff” and took him down to the police station. *Id.* at 13:9-12. The Appellant indicated, “that stuff was not mine.” *Id.* at 13:15-16.

The Trial Judge sustained the charged violation stating “the police officer ... had reason to stop the car, that he watched you. Your behavior was such that he watched you walk over, [and] drop something behind some stairs” *Id.* at 19:2-6. The Trial Judge found that based on Officer Bemis’ field test, that the substance was marijuana. *Id.* at 19:11-12. The Trial Judge found the Appellant guilty of the charged violation and imposed a \$150 fine. *See id.* at 19:12-13. The Appellant subsequently filed this timely appeal.

II

Standard of Review

Pursuant to § 31-41.1-8, the Appeals Panel of the Rhode Island Traffic Tribunal possesses appellate jurisdiction to review an order of a judge or magistrate of the Rhode Island Traffic Tribunal. Section 31-41.1-8(f) provides in pertinent part:

“The appeals panel shall not substitute its judgment for that of the judge or magistrate as to the weight of the evidence on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, or it may remand the case for further proceedings or reverse or modify the decision if the substantial rights of the appellant have been prejudiced because the judge’s findings, inferences, conclusions or decisions are:

- “(1) In violation of constitutional or statutory provisions;
- “(2) In excess of the statutory authority of the judge or magistrate;
- “(3) Made upon unlawful procedure;
- “(4) Affected by other error of law;
- “(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- “(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.”

In reviewing a hearing judge or magistrate's decision pursuant to § 31-41.1-8, this Panel "lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge [or magistrate] concerning the weight of the evidence on questions of fact." *Link v. State*, 633 A.2d 1345, 1348 (R.I. 1993) (citing *Liberty Mut. Ins. Co. v. Janes*, 586 A.2d 536, 537 (R.I. 1991)). "The review of the Appeals Panel is confined to a reading of the record to determine whether the judge's [or magistrate's] decision is supported by legally competent evidence or is affected by an error of law." *Id.* (citing *Envtl. Sci. Corp. v. Durfee*, 621 A.2d 200, 208 (R.I. 1993)). "In circumstances in which the Appeals Panel determines that the decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record or is affected by error of law, it may remand, reverse, or modify the decision." *Id.* Otherwise, it must affirm the hearing judge's (or magistrate's) conclusions on appeal. *See Janes*, 586 A.2d at 537.

III

Analysis

On appeal, the Appellant argues that "the judge did not give me a fair hearing." *See* Notice of Appeal at 1. An Appeals Panel of the Traffic Tribunal is empowered to overturn a trial where it is "[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record[.]" *See* § 31-41.1-8(f)(4)-(5). The Appellant contends that the Trial Judge did not provide a fair trial, but he did not articulate in his appeal form or at oral argument the reasons for his assertion that the trial was unfair. *See* Appellant's Notice of Appeal.

The Supreme Court has deemed an issue waived "when a party simply states an issue for appellate review, without a meaningful discussion thereof." *See Palange v. Palange*, 2021 WL275948, at *2, (R.I. Jan. 27, 2021). Thus, because the Appellant did not discuss or elaborate on this issue, this Panel deems the issue waived. *See id.*

This Panel finds the Trial Judge did not overlook or misconceive the evidence. At trial, the Trial Judge found Officer Bemis to be credible. *See* Tr. 19. He concluded that Officer Bemis had a valid reason to pull over and question Appellant because the back end of Appellant's car was blocking the roadway. *See id.* at 19. Moreover, based on Officer Bemis' testimony, the Trial Judge found that Officer Bemis had a valid reason to search the area because he observed the Appellant walk over and drop something behind the stairs. *See id.* at 19. At that point, the Trial Judge ruled that Officer Bemis properly conducted a field test and found that the substance was marijuana. *See id.* at 19.

As this Panel "lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge [or magistrate] concerning the weight of the evidence on questions of fact[,]" it will not disturb the Trial Judge's determinations regarding the veracity of the witness' testimony. *See Link*, 633 A.2d at 1348 (citing *Janes*, 586 A.2d at 537); *A. Salvati Masonry Inc.*, 151 A.3d at 749 (quoting *Van Dongen*, 132 A.3d at 1076). Consequently, this Panel is satisfied that the Trial Judge's decision was not clearly erroneous in light of the evidence presented and the Appellant was given a fair trial.

V

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the Trial Magistrate's decision was not clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Sec. 31-41.1-8(f)(5).

The substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation is sustained.

ENTERED:

Magistrate Erika Kruse Weller (Chair)

Judge Lillian Almeida

Magistrate Michael DiChiro, Jr.

DATE: _____